



# NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

## RESOLUTION No. 2022-06

### **Reduce Racial and Ethnic Disparities in Home Appraisals**

Reported to the Caucus by the NHCSL Housing Task Force  
Asw. Yvonne López (NJ), Chair

**Sponsored by Asw. Yvonne López (NJ) and Sen. Nellie Pou (NJ)**

Unanimously ratified by the Caucus on December 1, 2022

#### **I. Ethnic and racial disparities in homeownership intractably persist**

**WHEREAS**, homeownership is a fundamental factor in determining success, opportunity, and wealth. The home is generally the most valuable asset of those who own one.<sup>1</sup> Yet homeownership remains an aspiration for many, a symbol of stability and of joining the middle class; and,

**WHEREAS**, despite recent gains, as of 2020, only half of Hispanics (50.1%) and only 45% of Black Americans own their home, compared to 75% of white families.<sup>2</sup> While that rate is up from 45.4% in 2014, over half of Hispanic homeowners (52%) have lived with family or friends without paying rent to save for housing costs, versus 39% of Black respondents and 38% of white respondents, and just 10% of Hispanic

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<sup>1</sup> Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), Action Plan to Advance Property Appraisal and Valuation Equity, p. 4 (March 2022). Retrieved from <https://pave.hud.gov/actionplan>

<sup>2</sup> Dana Anderson, Hispanic Homeowners More Likely to Receive Financial Help Buying a Home: Redfin Survey (Redfin News, July 12, 2021) Available at <https://www.redfin.com/news/survey-hispanic-homeowners-financial-support-family/>

homeowners reported making no sacrifices to buy their first home, versus 23% of white homeowners.<sup>3</sup> And almost half of Hispanic homeowners (44%) have adult relatives living in their home, compared with 38% of Black homeowners and 25% of white homeowners.<sup>4</sup> This highlights the challenges minority groups face with relation to inherent discrimination in choosing housing, along with the unique sacrifices made by Hispanics to achieve homeownership; and,

**WHEREAS**, homeownership is often impeded by current lending and appraisal processes, both of which disproportionately and negatively impact people of color.<sup>5</sup> Partly because homeownership rates vary between white people and people of color, the median white family holds eight times the wealth of the typical Black family and five times the wealth of the typical Latino family;<sup>6</sup> and,

**WHEREAS**, despite over half a century of policies to combat discrimination in housing, a recent academic study found that neighborhood racial composition was an even stronger determinant of a home’s value in 2015 than it was in 1980;<sup>7</sup> and,

**WHEREAS**, eliminating racial disparities in homeownership rates would reduce the wealth gap between Black and white households by 31% and between Latino and white households by 28%. Further, “eliminating racial disparities in the amount of wealth families gain from owning a home would narrow the wealth gap by an additional 16 percent between Black and white households and by an additional 41 percent between Latino and white households” making homeownership a priority for closing the wealth gap;<sup>8</sup> and,

## **II. The appraisal industry and its processes are the primary problem behind racial and ethnic homeownership disparities**

**WHEREAS**, the primary reason for the increasing correlation between neighborhood racial composition and home value is the contemporary appraisal process, specifically, the use of the sales comparison approach and appraisers’ racialized assumptions about neighborhoods have caused a perpetual devaluation of communities of color;<sup>9</sup> and,

**WHEREAS**, the sales comparison approach, where the appraiser determines a value based on sales of similar properties in similar markets allows appraiser discretion as

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> PAVE Plan, *supra*, n1.

<sup>6</sup> Ibid. at p.1.

<sup>7</sup> Junia Howell, Elizabeth Korver-Glenn, The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015, *Social Problems*, Volume 68, Issue 4, November 2021, Pages 1051–1071, <https://doi.org/10.1093/socpro/spaa033>

<sup>8</sup> PAVE Plan, *supra*, n 1, at p. 4 (citing Sullivan, L. et al., The Racial Wealth Gap: Why Policy Matters (2021). Demos and Institute for Assets & Social Policy, Brandeis University. <http://racialwealthaudit.org/downloads/RacialWealthGap.pdf>).

<sup>9</sup> Howell and Krover-Glenn, *supra*, n. 7.

to which are the similar properties and markets, among other criteria. And, even in its strictest application, has necessarily kept on reproducing the undervaluation of properties in neighborhoods of color by furthering historically racially biased valuations into present day;<sup>10</sup> and,

**WHEREAS**, research by Freddie Mac reveals that “12.5 percent of appraisals for home purchases in majority-Black neighborhoods and 15.4 percent in majority-Latino neighborhoods result in a value below the contract price (the amount a buyer is willing to pay for the property), compared to only 7.4 percent of appraisals in predominantly white neighborhoods,”<sup>11</sup> corroborating previous observations that the average appraised property value of a neighborhood tends to decrease as the share of historically marginalized populations increases;<sup>12</sup> and,

**WHEREAS**, according to the Bureau of Labor Statistics, property appraisers and assessors are overwhelmingly non-Hispanic white (93.6%), with only 4.3% Hispanic or Latino, 1.1% Black and 1% Asian;<sup>13</sup> and,

**WHEREAS**, the racialized assumptions of appraisers, both conscious and unconscious, go beyond the sales comparison approach. “As late as the 1970s, the guidebooks used to train appraisers included very specific instructions to lower the value of homes in African-American and Latino neighborhoods. While that kind of overt racism is now illegal, more subtle biases still exist.”<sup>14</sup> A study by the Federal Housing Finance Agency found numerous instances of “references when the appraiser has clearly included race or other protected class references” in the commentary sections of present-day appraisals;<sup>15</sup> and,

### **III. The current regulatory scheme of the appraisal industry is opaque and may be unconstitutional, but states may improve upon it**

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<sup>10</sup> PAVE Action Plan, *supra* n. 1, at p. 44.

<sup>11</sup> PAVE Plan, *supra*, n1, at p 3 (citing Narragon, M., Wiley, D., McManus, D., Li, V., Li, K., Wu, X., & Karamon, K. (2021, September). Racial and Ethnic Valuation Gaps in Home Purchase Appraisals. Freddie Mac. <http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf>).

<sup>12</sup> *Ibid.* at p 3 (citing Howell, J. & Korver-Glenn, E. (2020). The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015. *Social Problems*, 68(4), 1051–1071. <https://doi.org/10.1093/socpro/spaa033>).

<sup>13</sup> Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, 11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity (2021), available at <https://www.bls.gov/cps/cpsaat11.htm>

<sup>14</sup> Subcommittee on Housing, Community Development, and Insurance, & FSC Majority Staff, U.S. House Committee on Financial Services (2019). Retrieved from [https://financialservices.house.gov/uploadedfiles/hhrg-116-ba04-20190620-sd002\\_-\\_memo.pdf](https://financialservices.house.gov/uploadedfiles/hhrg-116-ba04-20190620-sd002_-_memo.pdf) (quoting CityLimits.org, “Cityview: The Price is Wrong,” March 1, 1997).

<sup>15</sup> Federal Housing Finance Agency. Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary (December 14, 2021). Available at <https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx>

**WHEREAS**, the National Fair Housing Alliance (NFHA) found that “the appraisal industry is overseen by a complex interplay of federal, state, and private entities. This structure was largely developed in response to the savings and loan crisis of the 1980s, which among other things, resulted in Congress passing the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”).<sup>16</sup> Title XI of FIRREA set forth many aspects of the appraisal industry governance that are in effect today;<sup>17</sup> and,

**WHEREAS**, within the regulatory framework, the role of states is to license and certify appraisers and register and enforce requirements of appraisal management companies.<sup>18</sup> But FIRREA compels states to adopt licensing requirements for real estate appraisers which, at a minimum, “meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers.” The Appraisal Foundation is not a government agency. It is a private entity established in 1987 as a non-profit organization under the laws of Illinois. Despite this, FIRREA further compels states to administer examinations for real estate appraisers “consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation.” Since all these are minimum requirements, states can add additional improvements;<sup>19</sup> and,

**WHEREAS**, FIRREA also compels federal agencies issuing appraisal standards regulations to require compliance with the Uniform Standards of Professional Appraisal Practice (USPAP Standards) promulgated by the Appraisal Standards Board of the Appraisal Foundation;<sup>20</sup> and,

**WHEREAS**, since at least 2003, states have complained that “the frequency of changes in the USPAP Standards was an administrative burden and created challenges in investigating and enforcing complaints of violations of the USPAP Standards,”<sup>21</sup> which, in this context is especially problematic because, due to “the insular nature of

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<sup>16</sup> 12 U.S.C. §§ 3331-3356 (as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018).

<sup>17</sup> Yap, M., Williams, M., Rice, L., Chang, S., Christensen, P., & Dane, S. M. (2022). (rep.). *Identifying Bias and Barriers, Promoting Equity: An Analysis of the Appraisal Standards and Appraiser Qualifications Criteria*, p. 34 (National Fair Housing Alliance). Available at [https://nationalfairhousing.org/wp-content/uploads/2022/01/2022-01-18-NFHA-et-al-Analysis-of-Appraisal-Standards-and-Appraiser-Criteria\\_FINAL.pdf](https://nationalfairhousing.org/wp-content/uploads/2022/01/2022-01-18-NFHA-et-al-Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf)

<sup>18</sup> *Ibid.*

<sup>19</sup> 12 USC § 3345.

<sup>20</sup> 12 USC § 3339. And see Yap, *supra* n 17, at 36 (stating that the agencies are typically the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve Board; National Credit Union Administration (“NCUA”), and the Office of the Comptroller of the Currency (“OCC”).

<sup>21</sup> Yap, *supra* n 17, at 39 (citing GAO, Regulatory Programs: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry, GAO-03-404, at 20 (May 2003), <https://www.gao.gov/assets/gao-03-404.pdf>).

the Appraisal Standards Board and Appraiser Qualifications Board and their processes, the changes often center on small details, rather than significant issues such as fair housing or the impact of the standards and criteria on consumers of color;<sup>22</sup> and,

**WHEREAS**, in fact, as of early 2022, “the Appraisal Standards Board’s explanation of an appraiser’s obligations under fair housing and fair lending laws reside[d] in an Advisory Opinion” hidden behind a paywall that functionally limits public comment and debate, and even public awareness of the current law,<sup>23</sup> and changes could even be introduced “without the input of expertise outside the field of appraising (such as legal expertise or consumer protection/civil rights expertise);”<sup>24</sup> and,

**WHEREAS**, a legal analysis commissioned by the NHFA found that FIRREA limits The Appraisal Foundation’s USPAP and Appraisal Qualification criteria enforceability to “Federally related transactions” which cover “only a small portion of residential mortgage transactions” because they exclude the “vast majority of residential mortgage transactions [which] qualify for sale to Fannie Mae or Freddie Mac” and that the extent of the Foundation’s authority is suspect, but, in practice, because states do not have two parallel tracks for appraiser licensure, all real estate transactions are subject to the whims of the private entity known as The Appraisal Foundation;<sup>25</sup> and,

**WHEREAS**, the NHFA thus questioned the constitutionality of the entire scheme under the nondelegation doctrine adopted by the Supreme Court in *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936), which forbade delegating regulatory authority which is “necessarily a government function” to private entities, and has been interpreted to apply broadly unless government retained “pervasive surveillance and authority” over the entity in question;<sup>26</sup> and,

**WHEREAS**, the NFHA has called for reforming the appraisal process and reviewing and reconsidering the legal authority of the Appraisal Foundation and calling for deep reforms of its approach to diversity and non-discrimination. NFHA has also called for the Appraisal Standards Board to revise the Uniform Standards of Professional Appraisal Practice (“Appraisal Standards”) to clearly state that discrimination in appraisals is prohibited;<sup>27</sup> and,

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<sup>22</sup> *Ibid.*, at 39-40.

<sup>23</sup> *Ibid.*, at 39 (stating that some states merely incorporate the standards and criteria by reference, placing the burden on the appraisers to educate themselves on the various changes, and on the public to somehow become aware of them).

<sup>24</sup> *Ibid.*, at 38-39.

<sup>25</sup> *Ibid.*, at 36-17.

<sup>26</sup> *Ibid.*, at 39 (quoting *United States v. Frame*, 885 F.2d 1119, 1128-29 (3d Cir. 1989)).

<sup>27</sup> <https://nationalfairhousing.org/wp-content/uploads/2022/01/Appraisal-Study-Overview-NFHA.pdf>

**IV. The appraiser certification process erects undue barriers to the profession, protecting the personal incomes of those who write the guidelines**

**WHEREAS**, the system by which appraisers are certified, narrowly mandated by FIRREA through the Appraisal Foundation and almost robotically enacted by the states, requires escalating levels of formal education (up to a bachelor's degree), up to 300 hours in appraiser education of questionable value, and thousands of hours (up to 3,000) in a mentor-trainee relationship in which current Certified General Appraisers (the highest level), the ones who can provide the supervisory mentorship, are not mandated to participate;<sup>28</sup> and,

**WHEREAS**, the apprenticeship-like requirement, completely at the discretion of the supervisory appraiser, reduces the chances of someone with no pre-established connection to the industry being able to successfully enter the field. "There are several disincentives to acting as a Supervisory Appraiser, including the time, cost, and competition." The Supervisory Appraiser must commit the hours, for less pay than usual because, in many instances, they must be on site while the trainee conducts the appraisal, splitting their percentage of the fee to share with the trainee, meaning low pay for both, all the while, in effect, training their competition. Mentors thus tend to accept a trainee for reasons other than mere ability, discouraging diversity;<sup>29</sup> and,

**WHEREAS**, several states have strict limitations on how trainees can work under a mentor appraiser and many of those have provisions that require a "direct" appraiser (the mentor) to be "physically present for the appraised property inspection;"<sup>30</sup> and,

**WHEREAS**, while the Appraisal Foundation recently approved a virtual-course alternative to the experience hours apprenticeship-like requirement, it is still under development, has unknown costs and would require state-by-state enactment;<sup>31</sup> and,

**WHEREAS**, contrary to the approach taken by the Appraisal Foundation, this Caucus, in [Resolution 2017-13, Expanding Apprenticeship Programs](#), endorsed supporting and expanding apprenticeships as career certification pathways in lieu of, not in addition to, college diplomas, further calling upon state legislators and state labor departments to enact legislation or regulations whereby all apprenticeship programs with more than one apprentice are required to have an affirmative action program and to adhere to more rigid diversity requirements than currently required under Federal regulations; and,

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<sup>28</sup> Yap, *supra* n 17, at 64-70.

<sup>29</sup> *Ibid.*, at 67.

<sup>30</sup> Peck, I. (2016, May 24). *The decline of appraisers*. Working RE Magazine. Retrieved from <https://www.workingre.com/the-decline-of-appraisers/>.

<sup>31</sup> *Ibid.*

**V. FHA loans have an parallel regulatory scheme that impacts Latinos but now addresses appraisal discrimination**

**WHEREAS**, independently of the above scheme, “the U.S. Department of Housing and Urban Development (“HUD”) sets appraisal requirements for FHA loans, the Federal Housing Finance Agency (“FHFA”) reviews Fannie Mae and Freddie Mac’s appraisal requirements, and the Consumer Financial Protection Bureau (“CFPB”) issues valuation independence rules;”<sup>32</sup> and,

**WHEREAS**, Latinos are twice as likely to use Federal Housing Administration (FHA) loans to finance their homes than their non-Hispanic white counterparts.<sup>33</sup> On June 29, 2022, the Federal Housing Administration issued an update to its HUD Handbook 4000.1, FHA Single Family Housing Policy Handbook, which applies to FHA-loans only.<sup>34</sup> While still requiring that appraisers “follow FHA guidance and comply with the Uniform Standards of Professional Appraisal Practice (USPAP),” the manual also attempts to address the appraisal discrimination problems discussed herein by adding a nondiscrimination policy. The new policy states that the “Appraiser must not discriminate in developing any part of the appraisal or value conclusion based on characteristics that are protected by federal, state, or local laws,” and that:

No part of the appraisal analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, national origin of either the prospective owners or occupants of the Property, present owners or occupants of the Property, or the present owners or occupants of the properties in the vicinity of the Property, or on any other basis prohibited by federal, state, or local law.

The update does not address the competitive market disadvantage that buyers using FHA-loans face because the appraisals it mandates are stricter than for conventional loans,<sup>35</sup> requiring homes to meet “HUD’s minimum standards for health and safety” and the correction, by the seller, of even minor issues, like peeling paint, before the loan will be funded;<sup>36</sup> and,

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<sup>32</sup> *Ibid.*, at 34, fn. 85.

<sup>33</sup> Limón, N., Smeraski, J., Aguilar, J., Robinson, D., Aguilar, A., & Andrade Rivera, J. (2021). (rep.). *State of Hispanic Homeownership Report*. Available at <https://nahrep.org/downloads/2021-state-of-hispanic-homeownership-report.pdf>

<sup>34</sup> Federal Housing Administration’s (FHA) *Single Family Housing Policy Handbook* 4000.1. Available at [https://www.hud.gov/program\\_offices/housing/sfh/handbook\\_4000-1](https://www.hud.gov/program_offices/housing/sfh/handbook_4000-1)

<sup>35</sup> Limón, *supra*, n. 29.

<sup>36</sup> Federal Housing Administration’s (FHA) *Single Family Housing Policy Handbook* 4000.1, pp. 570-601. Available at [https://www.hud.gov/program\\_offices/housing/sfh/handbook\\_4000-1](https://www.hud.gov/program_offices/housing/sfh/handbook_4000-1) .

**WHEREAS**, the new FHA loan manual also eliminates the requirement that the appraisal must be done by a non-trainee.

## **VI. Conclusions**

**THEREFORE, BE IT RESOLVED**, that the National Hispanic Caucus of State Legislators calls on state legislatures to enact and make applicable to all appraisals in the state, the same nondiscrimination language adopted by the latest FHA-loan manual, requiring that the “Appraiser must not discriminate in developing any part of the appraisal or value conclusion based on characteristics that are protected by federal, state, or local laws,” and specifically that:

No part of the appraisal analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, national origin of either the prospective owners or occupants of the Property, present owners or occupants of the Property, or the present owners or occupants of the properties in the vicinity of the Property, or on any other basis prohibited by federal, state, or local law; and,

**BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators calls on states to enact policies that help make the appraisal industry more diverse and inclusive; and,

**BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators calls on state appraiser regulatory bodies to examine the barriers to entry into the appraiser profession in their states for disparate impact, identifying and analyzing any disproportionate burden on potential appraisers of color; and,

**BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators calls on all relevant entities, including states and the Appraisal Foundation to provide for an exam that, once passed, makes the individual a certified appraiser, replacing the current experience or mentorship requirement for appraisers, with the proviso that both systems can operate in parallel; and,

**BE IT FURTHER RESOLVED**, State Appraiser Regulatory Bodies should define metrics that can identify and measure patterns of mis-valuation, thus avoiding race and ethnicity-biased under- and over-valuations in appraised values of comparable properties in comparable neighborhoods and comparable areas; and,

**BE IT FURTHER RESOLVED**, at a minimum, training on fair housing and the USPAP (Uniform Standard of Professional Appraisal Practice) courses required for certification should include the history of discrimination and segregation and



the industry's role of assessment in establishing and resolving both; information on the costs of valuation bias to families, communities, the housing industry, and the nation, including the impact on homeownership and the wealth gap; an in-depth explanation of the federal fair housing laws and implementing regulations as well as the role of state and local fair housing laws; and,

**BE IT FURTHER RESOLVED**, given the disparate racial impact of hours of experience of the supervising evaluator criteria, this requirement should be changed by improving the exam content, including a practice component that ensures that a potential assessor has a clear understanding of industry practices; and replace the current experience requirement with an exam which, when passed, makes the person a certified appraiser, eliminating the need for mentoring requirements; and,

**BE IT FINALLY RESOLVED**, that, regarding the valuation process itself, the National Hispanic Caucus of State Legislators calls on appraisers to consider alternative valuation approaches to lower racial differences by reducing the impact of the sales comparison approach and implementing additional measures with new data that takes into consideration historical biases to avoid the persistence of mispricing of the past and to reduce the chances of overvaluation.

THE HOUSING TASK FORCE RECOMMENDED THIS RESOLUTION TO THE EXECUTIVE COMMITTEE FOR APPROVAL. THE EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED THIS RESOLUTION AT ITS MEETING OF AUGUST 12, 2022.

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY RATIFIED THIS RESOLUTION ON DECEMBER 1, 2022 AT ITS ANNUAL MEETING IN LAS VEGAS, NEVADA